Office Supreme Court, U. S.
FILED
MAY 17 1917
JAMES D. MAHER
CLERK

NO. 25

IN THE

SUPREME COURT OF THE UNITED STATES

In the matter of the Petition of THE INDIANA TRANSPORTATION COMPANY for a Writ of Prohibition. } Original

REPLY BRIEF.

CHARLES E. KREMER,
RUSSELL MOTT,
Proctors.

CHAMPLIN LAW PRINTING CO.

IN THE

Supreme Court of the United States

In the matter of the Petition of THE INDIANA TRANSPORTATION COMPANY for a Writ of Prohibition.	Original

REPLY BRIEF.

BRIEF.

I.

The defendant objected to the action of the court by filing its first set of exceptions and, when these were overruled, no further action by the defendant could operate as a waiver of its objections.

Harkness v. *Hyde,* 98 U. S. 476.

Merchants H. & L. Co. v. *Clow & Sons,* 204 U. S. 286.

Atlantic States Railroad Co., 164 U. S. 633.

Davis v. *C. C. C. & St. L. Railroad Co.,* 217 U. S. 157.

Mex. Cen. R. R. Co. v. *Pickney,* 149 U. S. 194.

Coal Co. v. *Blatchford*, 78 U. S. 172.
First National Bank v. *Cunningham*, 48 Fed. 510.
Graham v. *Spencer*, 14 Fed. 603.
Donahue v. *Calumet Fire Clay Company*, 94 Fed. 23.
Romaine v. *Union Insurance Co.*, 28 Fed. 625.
Waters v. *Central Trust Co.*, 126 Fed. 468.
Yanuszauchas v. *Mallory S. S. Co.*, 232 Fed. 133.
Morris v. *Graham*, 51 Fed., page 53.
Lung Chung v. *Northern Pac. Ry. Co.*, 19 Fed. 254.
Baungardner v. *Bono Fertilizer Co.*, 58 Fed. 1.
Ins. Co. of No. Am. v. *Svenden*, 74 Fed. 346.
Stonega Co. v. *Louisville, etc., Co.*, 139 Fed. 271.
Foster-Mulburn Co. v. *Chinn*, 202 Fed. 175.

II.

Wherever an admiralty court has allowed an amendment by adding a new cause of action over which it had no jurisdiction it has required a new and additional service before calling upon the defendant to answer.

The Monte, 12 Fed. 331.
Moore v. *Kimball*, 66 Fed. 340.
The Lowlands, 147 Fed. 986.
The Nora, 181 Fed. 845.

ARGUMENT.

The main question in this case, that is, whether or not the court below had jurisdiction of the defendant without service of process, has, we believe, been fully covered by the cases cited in the original brief and it is unnecessary to add further citations. The respondents have cited nothing in their brief to show that the court originally had jurisdiction of the defendant as to the 373 additional libelants.

The only attempt which the respondents have made to support the jurisdiction of the court below is by citing a number of cases in which admiralty has allowed the consolidation of libels.

Rich et al. v. *Lambert et al.*, 53 U. S. 347.
Fretz v. *Bull et al.*, 53 U. S. 468.
The Clan Graham, 153 Fed. 977.
The Samson, 197 Fed. 1017.
The Albert, 40 Fed. Rep. 836.

These cases refer to a consolidation of cases under section 921 of the Revised Statutes. This statute relates entirely to pending cases and does not relate to the consolidation of causes of action. Here we have no pending cases except one, and the court is attempting to consolidate causes of action and not pending cases. The consolidation might properly be proposed if the 373 cases were actually pending in the court. The right to consolidate is statutory and this is its authority. There is no statute authorizing consolidation of causes of action and, there-

fore, there is no authority for joining 373 additional causes of action with a pending one, and these cases therefore are not in point.

In all these cases, without exception, all the parties were properly before the court and it was merely a question of the merits of consolidation and joinder of cases in admiralty. As petitioner pointed out in great length in its original brief these cases have absolutely no bearing upon the question involved, which is a question, not of practice, but of jurisdiction. No further answer is needed to these cases which comprise the bulk of the brief of the respondents, except to say that this is a question of jurisdiction, and not of practice, and that cases which cover only the question of practice in admiralty, where the court had full jurisdiction, have no bearing on the question involved in this case.

In fact the respondents have practically admitted that the court had no jurisdiction because in a large portion of their brief they claim that the objection to the jurisdiction has been waived by the petitioner by filing its exceptions. By its very nature this position admits that the court had no jurisdiction originally but urges that the petitioner later subjected itself to the jurisdiction of the court. This case is peculiar in this: that the petitioner never entered any appearance to the amended libel. It was already served and before the court in the suit by the administrator of the estate of Earl H. Dawson and its first exceptions objected to the amendment, as follows:

> 1st. "That the said amended libel is informal, contrary to the admiralty rules and procedure and contrary to law because it joins with

the original libelant 373 additional libelants who have a separate and distinct cause of action from that of the original libelant, and are, therefore, improperly joined.

2nd. Because the above named respondent cannot in law in this case be called upon to answer the said amended libel as to 373 additional libelants."

It cannot possibly be said that this is a waiver of the objections. In numerous cases, both in this court and in the Circuit Courts it has been held that it is sufficient if the defendant calls the attention of the court to the objection which shows the illegality of the action of the court, and its lack of jurisdiction. No special form or words is necessary, and no special appearance but, as a matter of fact, there never was any appearance whatever for the defendant as against the three hundred seventy-three new parties. The defendant was already in court defending against the administrator of the estate of Earl H. Dawson and it simply objected to the court's order joining 373 new parties, which was a sufficient objection as to jurisdiction.

The respondents also claim that the defendant, on the 18th day of September, filed a second set of exceptions, which waived the jurisdictional point, and operated as a general appearance. This second set of exceptions was filed by the defendant after the judge had overruled its first objection to the jurisdiction of the court, and again ordered the defendant to answer. It interposed the second set of exceptions to protect it from default and in this second set it again objected to the jurisdiction of the court.

This cannot be construed to be a waiver of the objection. In fact, if the objection of the legality of the proceeding of the court had once been raised by the defendant, it could have pleaded to the merits and gone to trial without waiving the jurisdictional point. This has been settled by a vast number of cases both in this court and in the lower federal courts. The leading case is the case of *Harkness* v. *Hyde*, 98 U. S. 476. This case has been followed in a large number of other cases, many of which we have cited in this reply brief.

The case of *Harkness* v. *Hyde* was a case of illegal service, and raised the question of personal jurisdiction. The defendant first objected to the service and, on that being overruled, pleaded to the merits of the action and it was claimed that this operated as a waiver of the jurisdictional point. Mr. Justice Field stated the law on this point in the following words:

> "The right of the defendant to insist upon the objection to the illegality of the service was not waived by the special appearance of counsel for him to move the dismissal of the action on that ground, or what we consider as intended, that the service be set aside; nor, when that motion was overruled, by their answering for him to the merits of the action. Illegality in a proceeding by which jurisdiction is to be obtained is in no case waived by the appearance of the defendant for the purpose of calling the attention of the court to such irregularity; nor is the objection waived when being urged it is overruled, and the defendant is hereby compelled to answer. He is not considered as abandoning his objection because he does not submit to further proceedings without contestation. It is

> only where he pleads to the merits in the first instance, without insisting upon the illegality, that the objection is deemed to be waived."

So, too, in the case of *Southern Pacific Company* v. *Denton*, 146 U. S. 202, Justice Gray said, on page 206:

> "But in the present case there was no such waiver. The want of jurisdiction, being apparent on the face of the petition, might be taken advantage of by demurrer, and no plea in abatement was necessary. *Coal Co.* v. *Blatchford*, 11 Wall. 172. The defendant did file a demurrer for the special and single purpose of objecting to the jurisdiction; and it was only after that demurrer had been overruled, and the defendant had excepted to the overruling thereof, that an answer to the merits was filed. Neither the special appearance for the purpose of objecting to the jurisdiction, nor the answer to the merits after that objection had been overruled, was a waiver of the objection."

The decision in *Harkness* v. *Hyde* has been approved and followed again and again by this court. For example:

> *Merchants H. & L. Co.* v. *Clow & Sons*, 204 U. S. 286.
>
> *Atlantic States Railroad Co.*, 164 U. S. 633.
>
> *Davis* v. *C. C. C. & St. L. Railroad Co.*, 217 U. S. 157.
>
> *Mex. Central Railroad* v. *Pickney*, 149 U. S. 194.

In the case of *Coal Company* v. *Blatchford*, 78 U. S. 172, Justice Field held that the proper way to point out the lack of jurisdiction was by demurrer, which is practically the same as the exceptions in

this case. We submit to the court that this is a question more of substance than of form and if the defendant objects to the action of the court it is sufficient. This has never been expressed better than by Justice Field when he said:

> "Illegality in a proceeding by which jurisdiction is to be obtained is in no case waived by the appearance of the defendant for the purpose of calling the attention of the court to such peculiarity."

In the case of *First National Bank* v. *Cunningham,* 48 Fed. 510, at page 517, the court said:

> "A party appeared by counsel to make objections to the sufficiency of the proceedings, and which objections were overruled. This action was claimed in subsequent proceedings to be a waiver of such objection, but the court, by Bronson, C. J., said: 'It would be strange indeed, if that could be construed into a waiver of the very objection which he took.'"

In the case of *Graham* v. *Spencer,* 14 Fed. 603, at page 607, the court said:

> "In several of the cases above cited there is nothing in the report to show that the appearance was special. The fact of the withdrawal after the plea or motion was overruled, seems to have been deemed enough. Two cases in the Supreme Court taken together, will show that a mere appearance, without pleading to the merits is not necessarily a submission."

In the case of *Donahue* v. *Calumet Fire-Clay Company,* 94 Fed., page 23, at page 27, the court quoted from the case of *Harkness* v. *Hyde,* and said further:

> "The basis of the doctrine is that the defendant does not appear voluntarily, but under a de-

gree of compulsion, when having made, as strenuously as possible in the first instance, objection to the service of the process, he yields to answer to the merits. Particularly must this be so when, as in this case, he repeatedly reiterates, emphasizes, and insists upon his protests against the jurisdiction and the manner of bringing him into court."

Perhaps the best discussion of the principle applied in the Federal Courts appears in the decision of Judge Harmon in the case of *Romaine* v. *Union Insurance Company,* 28 Fed. 625. On pages 637 and 638 the following appears:

"Both in law and equity cases this matter of a formal and preliminary *appearance* is everywhere disused, notwithstanding the rigid and technical enforcement of the rule that a general appearance operates as a waiver of the objection we are considering, and that it must be taken by a special appearance for that purpose. But the fact is that appearances are rarely formally entered *as such,* notwithstanding our equity rule 17; the solicitor simply entering his name on the docket, and appearing by whatever step he may take in pleading. This, of course, is a general appearance, and waives every mere irregularity, but never any jurisdictional question; the cases showing that the federal courts, and especially the Supreme Court, are the most exacting of all in regard to these two rules. If a special appearance is desired, it seems to be accomplished by some mere statement of counsel that he so appears, or it is left to a mere implication from the steps he takes; and wherever the fact appears that he so limits his appearance, no *matter how,* no courts are more liberal than the federal courts, and all are so, in giving effect to that intention, without regard to any technical requirement of the practice in that behalf. *Harkness* v. *Hyde,*

98 U. S. 476. I shall merely cite the cases I have classified under the general head of 'Appearance' to establish these views; but it is shown by all the cases more by an exhibition of their disregard of technical forms than by any decisions or discussions on the subject. The general result is that the party must manifest an intention to appear specially, or he will be rigidly held to have appeared generally; particularly by taking any step that can be taken only by such an appearance; but the courts have never been exacting to require the manifestation of the intention to appear specially in any particular way whatever."

This doctrine that the courts of the United States will look to the substance, and not to any particular form, has been repeatedly affirmed. For example, in the case of *Waters* v. *Central Trust Company,* 126 Fed. 468, at the bottom of page 471, the court said:

"Evidently the sole purpose of counsel for defendant in making said application for extension of time after the state court had thus refused to pass upon the application was to preserve the rights of his client to a removal of the cause, when the state court should act upon said petition. It is immaterial to the decision of the question herein whether such action was or was not necessary. There was no waiver, for 'waiver is the intentional relinquishment of a known right.' *Shaw* v. *Spencer et al.,* 100 Mass. 382, 395; 97 Am. Dec. 107; 1 Am. Rep. 115; *Hoxie* v. *The Home Insurance Company,* 32 Conn. 31, 40, 85 Am. Dec. 240. Here was no relinquishment, intentional, or otherwise, but a manifest intention to deny the right of the state court to proceed in the cause, and to assert the rights of defendant to be heard in another jurisdiction.

"We are not aware of any principle upon which a party, being unable to presently assert

> his jurisdictional rights because of the refusal of a court to consider his claim, can be said to voluntarily abandon said rights, because he may consider himself obliged, by reason of the action of the court, to assent to a postponement of the time when such jurisdictional rights may be asserted."

If the defendant in this case had not pleaded its second set of exceptions it would have been defaulted and this can never be required of a defendant. As was said by the court in the case of *Yanuszauckas* v. *Mallory S. S. Co.,* 232 Fed. at page 133:

> "To assert that the defendant was compelled to accept a situation which might result in a default being taken against him while the court was considering its rights, is both illogical and unfair."

The respondent has cited a number of cases where defects in the forms of the service have been waived. We need hardly call the attention of the court to the fact that these cases are not cases of jurisdiction and whatever may be the law as to them they have absolutely no application to the present case. The distinction is well pointed out in the case of *Morris* v. *Graham,* 51 Fed. at page 54:

> "While the defendant may very properly be estopped from denying the jurisdiction of the court which he has voluntarily selected, on account of technical grounds, or irregularity, or insufficiency of service, which has been practically cured by his appearance, the court is not estopped from inquiring into its jurisdiction based upon service, facts of parties, values, or any other matters which are material. There is an important distinction between mere irregularities and such defects as render a ser-

> vice a nullity. Although an irregularity may be waived, and illegality of service, or an essential defect, may be taken advantage of at any subsequent stage of the action, whether the appearance has been special or general. 'An appearance does not preclude a party from moving to dismiss for the want of jurisdiction, or any other sufficient ground, except for want of notice, in the record.'"

The same question was taken up and discussed by the court in the case of *Lung Chung* v. *Northern Pac. Ry. Co.*, 19 Fed. 254.

The respondents have several times argued in their libel as if this were a question of defective service, or as if some sort of service could have been had, or had been had, upon the defendant, but the record shows that the court, when it allowed the amendment by adding 373 new cases, at once ordered the defendant to plead to the amended libel. This excluded any possibility of service, and it was necessary for the defendant to take some action at once, or be defaulted.

The defendant was already before the court in the case of Earl H. Dawson deceased and it took the only method it could take. It entered no new appearance but at once excepted to the allowance of further parties to be joined as parties libelant. No appearance was ever entered by the defendant in any way to the three hundred seventy-three new suits. It simply objected to the allowance of the amended libel, as it had to do, in order to protect itself from a general default being entered against it. The judge then, at once, without argument, overruled the defendant's exceptions, and forced it

to again default or plead. Defendant thereupon excepted again raising the jurisdictional point.

There is nothing in this record that in any way shows the defendant ever waived its objections to the course taken by the judge below. In fact, the entire record shows the defendant in every way has urged its rights again and again upon the court below, without success, and the defendant could not have waived its objection to the question of jurisdiction.

The cases we have cited in this brief we believe cover the point in this case. It was sufficient if the defendant raised the objection of the legality of the proceeding in any form, so the objection was brought to the attention of the court, and when this had once been done, under the rules stated in *Harkness* v. *Hyde* and followed in a vast number of other cases, no action by the court could overrule the defendant's objection and no further answer by the defendant could operate as a waiver. The only requirement is that the defendant will call the attention of the court to the jurisdictional defect at once, and not attempt to play fast and loose with the court by first going to trial on the merits, and then objecting that the court did not have jurisdiction.

There is no possible showing in this case that the defendant ever entered any general appearance or intended to, or in any way waived its objections to the action of the judge below in allowing 373 new cases to be added to the original suit and ruling on the defendant to answer, nor is there anything that can show that the court ever had jurisdiction.

The respondents, in their brief, have also cited three cases merely stating that they prove that this court should not have issued this writ of prohibition. Two of these cases are:

Ex parte Gordon, 104 U. S. 515.

In re The Louisville Underwriters, 134 U. S. 488.

In these cases the Supreme Court of the United States denied the writ of prohibition after going carefully into the matter and deciding that the court below had jurisdiction. This is the very question to be decided in this case and the cases cited are clearly in favor of petitioner as they both decided that whether a writ of prohibition should issue or not depends upon whether the court has jurisdiction.

The third case cited by the respondents is the case of *In re New York, etc., S. S. Co.*, 155 U. S. 523, which is to the same effect. The court there said on page 531:

> "We have recently thus stated the principles applicable to the issue of the writ of prohibition in *In re Rice, ante*, 376: 'Where it appears that the court, whose action is sought to be prohibited has clearly no jurisdiction of the case originally or of some collateral matter arising therein, a party who has objected to the jurisdiction at the outset and has no other remedy is entitled to a writ of prohibition as a matter of right.'"

Respondents have also suggested that one reason why the writ of prohibition should be refused in this case is that the question might be raised by appeal. To require a petitioner to try to cover this by appeal

would be an absurdity. Petitioners would have to go to the expense of a trial of 374 separate suits and then on final judgment file a surety bond for several million dollars in order to raise the necessary preliminary question which is now before this court.

We submit that the right to a writ of prohibition exists in a case in which a court has attempted to take jurisdiction without legal right. The purpose and object is that illegal action may be stopped before the litigants are subjected to the hardship and expense of idle litigation, or forced to protect their rights by an appeal, which is in this case a practical impossibility.

We further submit that it is for the interest of the respondent that it should not indulge in litigation before a court which has no jurisdiction, and that the interest of both parties will be benefited by having this question settled by a writ of prohibition before the litigation proceeds further.

There has never been a case before exactly like the present one. The very fact that the procedure is unheard of tends to show that it is not within the accepted jurisdiction of the court. We have, however, found a line of cases which are somewhat similar to the present case. In each of these cases there was a libel *in rem* in admiralty, and thereafter a libel *in personam* was joined and, in every case, additional service was required.

The Monte, 12 Fed. 331.
Moore v. *Kimball*, 66 Fed. 340.
The Lowlands, 147 Fed. 986.
The Nora, 181 Fed. 845.

As was stated in the case of *Moore* v. *Kimball*, 66 Fed. Rept. 342:

> "The court also erred in rendering a personal decree against Moore. There is in the libel no prayer for a monition and personal judgment against him. There was no service of monition on him, no attachment made of his property for the purpose of bringing him into court, and no voluntary appearance to answer to the proceedings *in personam*. The fact that he appeared by his attorneys to answer to the libel *in rem*, and to defend the *res* seized, did not give the court jurisdiction to render a personal judgment against him."

We believe the language of the court here quoted applies to the present case exactly. The appearance of the defendant in the case of Earl H. Dawson, had no bearing whatever on the 373 new suits, and to give the court jurisdiction over them, it would be necessary to have a new service bringing the defendant before the court. To rule otherwise it would necessarily follow that a person before the court for any one purpose would be before the court for all purposes and it would entirely overturn every accepted rule of jurisdiction. (See *Pennoyer* v. *Neff* and other cases cited by petitioners in original brief.)

It would at once bring out the result deprecated in *The Monte* case, cited above, and cited in *The Lowlands*, 147 Fed., at page 988:

> "It would be unjust to hold that a foreign owner shall not appear in a foreign court to reclaim his property as against an unauthorized seizure without necessarily subjecting himself to liability for a personal judgment against which he has never been cited to defend."

In other words, a non-resident defendant could not go into court to prevent a default judgment on one personal action against him without subjecting himself to as many other additional personal actions as choose to intervene in the original action.

As to the point made by the petitioners that they are being deprived of their right to a jury trial in the admiralty suit on the question raised by this joinder of 373 new cases the respondents have cited nothing except two cases, on pages 22 and 23 of their brief, where two jury trials were consolidated. This might possibly be within the rights of the court but the allowance of the consolidation of 374 cases operates immediately to deprive the defendants of all their rights to a jury trial. This is a practical question and we submit the judge exceeded his jurisdiction in entering an order which thus deprived the defendants of their substantial rights.

We submit to the court that a writ of prohibition should issue in this case because:

First. Under the statute the Supreme Court should issue a writ of prohibition in any case where a court of admiralty is proceeding without jurisdiction or by exceeding its jurisdiction.

Second. The court below is without jurisdiction in this case because it did not obtain jurisdiction over the 373 new cases. The court had no method of obtaining jurisdiction except by proper service and there was no service in this case because the defendants were ruled on to answer at the very time the amendment was allowed. This is contrary to all principles of jurisdiction as laid down in the

case of *Pennoyer* v. *Neff* and other cases cited in our original brief.

Third. The defendant never waived the jurisdictional objection, nor submitted itself to the jurisdiction of the court because it raised the question of the illegality of the action of the court immediately, by its exceptions, which was all it was required to do under the rule of *Harkness* v. *Hyde,* and other cases cited in this brief, and when it had once objected to the illegality of the action of the court, and its objections had been overruled by the judge, no further pleading by the defendant operated to waive its objections.

For the reasons above cited we submit to the court that a writ of prohibition should issue in this case.

Respectfully submitted,

CHARLES E. KREMER,
RUSSELL MOTT,
Proctors for Petitioner.

Chicago, May, 1917.

Office Supreme Court, U. S.
FILED
JAN 15 1917
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 25, Original.

EX PARTE: IN THE MATTER OF THE INDIANA TRANSPORTATION COMPANY, PETITIONER.

RETURN OF RESPONDENT TO RULE TO SHOW CAUSE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 25, Original.

IN THE MATTER OF PETITION OF INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION.

For return to the rule heretofore entered in said cause the undersigned submits to the court the attached certified copies of certain documents and orders.

KENESAW M. LANDIS.

LIBEL AND INTERROGATORIES.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION. IN ADMIRALTY.

To the Honorable Judges of the District Court of the United States in and for said Division:

The libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, against The St. Joseph-Chicago

Steamship Company, a corporation; The Indiana Transportation Company, a corporation, and The Dunham Towing and Wrecking Company, a corporation, in a cause of damage, civil and maritime, alleges as follows:

First. That the libelant is administrator of the estate of Earl H. Dawson, deceased, duly appointed and qualified to act as such.

Second. That on July 24, A. D. 1915, The St. Joseph-Chicago Steamship Company, a corporation, was the owner of the steamer known as the *Eastland*, and had chartered said steamer to said Indiana Transportation Company, for the purpose of carrying passengers thereon to Michigan City, Indiana, from a point on the Chicago River near and just west of the Clark street bridge which crosses said river, in the city of Chicago, County of Cook, and State of Illinois, district and division aforesaid, and said Dunham Towing and Wrecking Company, a corporation, was the owner of a tugboat known as the *Kenosha*, which was attached to said steamer *Eastland* by ropes and cables at the point aforesaid on said Chicago River, and said steamer and tug were then and there being used by said libelees in the business of commerce and navigation upon Lake Michigan and its tributary waters, including said Chicago River.

Third. Libelant, upon information and belief, alleges that on said 24th day of July, A. D. 1915, said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company accepted as a passenger on said steamer said Earl H. Dawson, at the point aforesaid on said Chicago River, for the purpose of conveying said Earl H. Dawson as such passenger to Michigan City, Indiana, on said steamer, and while attempting so to do then and there so carelessly, negligently, wilfully, wantonly, wrongfully and improperly so managed, operated, and controlled said steamer that it then and there tipped over on its side in said Chicago River, and by reason thereof said Earl H. Dawson was then and there killed.

Fourth. Libelant also alleges on information and belief that at the time and place of the tipping over of said steamer as aforesaid said Dunham Towing and Wrecking Company so carelessly, negligently, wilfully, wantonly, wrongfully and improperly managed, operated and controlled its said tugboat while so attached to said steamer as aforesaid that thereby, in connection with said wrongful, negligent and improper conduct of said other libelees, said steamer was then and there caused to tip over as aforesaid.

Fifth. Libelant, not being advised of all that took place and of all conditions existing on and in connection with said steamer and tug at and before the time of the tipping over of the same as aforesaid, and therefore reserving the right to claim the benefit of any faults causing such tipping over which may result on a full hearing herein, on information and belief alleges that said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company, in addition to their negligent and wrongful conduct above set forth, were guilty of the following specific faults, which caused said steamer so to tip over:

1. Said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company were negligent in using a steamer which was and which they knew, or by the exercise of proper care would have known, to be unsafe and unseaworthy.

2. That they were negligent in permitting a large number of passengers to board said steamer without attending to their duty to see that proper precautions were taken to protect said passengers from harm and injury.

3. That they were negligent in allowing a larger number of passengers to board said steamer than could safely and properly be carried thereon.

4. That they were negligent in not providing proper and competent servants to manage, control and operate said steamer.

5. That they were negligent in not providing sufficient

employees to properly manage, control and operate said steamer.

6. That they were negligent in not providing proper ballast tanks and other apparatus and appliances to prevent said steamer tipping over.

7. That they were negligent in improperly operating, controlling and managing the ballast tanks, apparatus and appliances which were provided on said steamer.

8. That they were negligent in allowing a large number of passengers to board said steamer, and in moving and attempting to move said steamer with the ballast tanks thereon partially or wholly unfilled with water.

9. That they were negligent in disconnecting the ropes and cables by which said steamer was attached to its dock.

10. That they were negligent in moving and in attempting to move said steamer when it was, and when they knew or by the exercise of proper care would have known that it was, in an unsafe and improper condition to be moved.

11. That they were negligent in moving and in attempting to move said steamer in an unsafe and improper manner.

12. That they were negligent in allowing and in ordering said tugboat *Kenosha* to move and tow, and to attempt to move and tow, said steamer when said steamer was, and when they knew or by the exercise of proper care would have known that said steamer was, in an unsafe and improper condition to be moved and towed.

13. That they were negligent in ordering and in allowing said tugboat *Kenosha* to move and tow and to attempt to move and tow said steamer under unsafe and improper conditions and in an unsafe and improper manner.

14. That they were negligent in not warning and ordering the passengers on said steamer to leave and disembark therefrom when they, said companies, knew, or by the exercise of proper care would have known, that it was unsafe and dangerous for such passengers to remain thereon.

15. That they were negligent in allowing passengers to

board said steamer when they, said companies, knew, or by the exercise of proper care would have known, that it was dangerous and unsafe for such passengers to board same.

16. That they were negligent in permitting a large number of passengers to board said steamer without previously having had said steamer properly inspected and tested to determine whether such steamer was properly constructed and equipped and in proper condition to safely allow such large number of passengers to be thereon.

17. That they were negligent in permitting a large number of passengers to board said steamer when said steamer was not and when they, said companies, knew, or by the exercise of proper care would have known, that said steamer was not properly constructed and equipped and in proper condition to safely allow such large number of passengers to be thereon.

18. That they negligently permitted a large number of passengers to board said steamer without having proper inspections and tests made to determine whether it was sufficiently stable and in proper condition to safely allow such number of passengers to be thereon, and permitted such large number of passengers to board same when it was not, and when they, said companies, knew, or by the exercise of proper care would have known, that it was not, sufficiently stable and in proper condition for such purpose.

19. That they negligently failed to provide sufficient and proper life-saving apparatus and equipment on board said steamer for the number of passengers permitted by them to board, and who did board, the same, and negligently failed to have properly accessible for such passengers such life-saving apparatus and equipment as were provided thereon.

20. That they negligently failed to use proper care to protect from harm and injury the passengers permitted by them to board said steamer when they, said companies, knew, or by the exercise of proper care would have known,

that the condition of said steamer was such that it was in danger of tipping over.

21. That they negligently permitted said steamer to be overloaded with a great amount of freight and supplies and other paraphernalia in addition to the large number of passengers permitted by them to be thereon without taking proper precautions and exercising proper care to make said steamer stable and safe under such conditions for said passengers.

22. That they were warned of the danger of said steamer tipping over a sufficient length of time before it did tip over to have enabled them by the exercise of proper care to cause all or a portion of said passengers to safely disembark from said steamer before it tipped over and prevent it from tipping over, yet they carelessly, negligently, and wilfully and wantonly failed to heed such warnings and to exercise such care.

Sixth. And said Dunham Towing and Wrecking Company, in addition to its negligent and wrongful conduct above set forth, was guilty of the following specific faults which caused said steamer to tip over as aforesaid:

1. It negligently attempted to move and tow, and did move and tow, said steamer when it was not and when it, said company, knew, or by the exercise of proper care would have known, that said steamer was not in a safe and proper condition to be moved and towed.

2. It negligently attempted to move and tow, and did move and tow, said steamer in an improper and unsafe manner.

3. It negligently managed, operated, and controlled its said tug boat *Kenosha* while same was attached to said steamer.

Seventh. And libelant on information and belief further alleges that said Earl H. Dawson, deceased, left him surviv-

ing next of kin as follows: William Dawson, his father; Edward Nathaniel Dawson, his brother, and Lillian Edna Dawson, his sister, who are still living; and by reason of the death of said Earl H. Dawson, deceased, as aforesaid, his said next of kin have been and are deprived of their means of support and have been pecuniarily injured as a direct result of the death of said deceased.

Wherefore your libelant prays that process in due form of law, according to the course and practice of this honorable court, may issue against said St. Joseph-Chicago Steamship Company, a corporation; said Indiana Transportation Company, a corporation, and said Dunham Towing and Wrecking Company, a corporation, and that said St. Joseph-Chicago Steamship Company, a corporation; said Indiana Transportation Company, a corporation, and said Dunham Towing and Wrecking Company, a corporation, may be cited to appear and answer all and singular, the allegations of this libel, and that upon final hearing this honorable court may find in favor of libelant's claim herein and decree payment thereof with interest and costs, and that this honorable court may grant such other and further relief as libelant may be entitled to receive in the premises.

JAMES F. BISHOP,
As Administrator of the Estate of
Earl H. Dawson, Deceased, Libelant.

HARRY W. STANDIDGE,
Proctor for Libelant.

STATE OF ILLINOIS,
County of Cook, ss:

James F. Bishop, being duly sworn, says that he is administrator of the estate of Earl H. Dawson, deceased, libelant herein; that he has read the above and foregoing libel

and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be alleged on information and belief, and as to such matters affiant believes it to be true.

JAMES F. BISHOP.

Subscribed and sworn to before me this 20th day of August, A. D. 1915.

[SEAL.] IRA W. HURLEY,
Notary Public.

Interrogatories to be Propounded by the Above-named Libelant to, and to be Answered by, St. Joseph-Chicago Steamship Company.

1 Q. Were you, on July 24, A. D. 1915, the owner of the steamer known as the *Eastland?*

2 Q. Was said steamer, on said July 24, A. D. 1915, chartered by you to the Indiana Transportation Company to carry passengers from a point on the Chicago River near to and just west of the Clark Street bridge in Chicago, Illinois, to Michigan City, Indiana?

3 Q. Did you, on said July 24, A. D. 1915, deliver said steamer to the starting point of the voyage mentioned in interrogatory 2, and was said steamer at said time and place wholly manned by your crew? If not, state whose crew it was manned by.

4 Q. State the number of which the crew mentioned in interrogatory 3 consisted, and the names and prescribed duties of the principal members of such crew, and particularly those whose duties directly affected the safety of the passengers on said steamer. Also state the length of the period of service of each of said principal members as a member of said crew.

5 Q. State the names and duties of the members of the

crew mentioned in interrogatories 3 and 4, who had charge of the ballast tanks on said steamer, and any other members of said crew whose duties affected the matter of the stability of said steamer, and state the length of the period of service of each as a member of said crew.

6 Q. State what parts of said steamer and what conditions thereof affected its stability and how.

7 Q. State what the condition of said ballast tanks was at the time and just prior to the time said steamer tipped over on July 24, A. D. 1915, with reference to the condition of repair thereof and the amount of water therein.

8 Q. State if you know whether lack of sufficient water in said ballast tanks caused said steamer to tip over.

9 Q. State, so far as you know, all of the causes and conditions which caused said steamer to tip over.

10 Q. State the number of passengers on said steamer at the time it tipped over, and whether in such number children and babes in arms were counted, and, if so, how?

11 Q. State the amount of coal in the bunkers of said steamer and the amount of other supplies and paraphernalia on it at the time it tipped over.

12 Q. State whether the number of passengers on said steamer at the time it tipped over was in any way regulated, governed, or affected by the amount of coal and other supplies and paraphernalia on said steamer at said time.

13 Q. State whether prior to the time of such tipping over of said steamer there was knowledge on the part of any of your officers that previously there had been difficulties in the operation of said steamer with reference to the stability thereof; and, if so, state what such knowledge was.

14 Q. State whether prior to the time of the tipping over of such steamer you or any one on your behalf made any tests with reference to the stability of said steamer, and, if so, state what such tests were and the results thereof.

15 Q. State whether any of your officers have knowledge as to whether any tests with reference to the stability of said

steamer were ever made by any one after the time of the construction of said steamer, and, if so, what such tests were, by whom made, and the results thereof.

16 Q. State when the last United States Government certificate was issued referring to the carrying capacity of said steamer, what carrying capacity was specified therein, and whether anything was provided in said certificate as to the number of passengers specified therein being governed or affected in any way by the amount of supplies and other paraphernalia to be carried with such passengers on said steamer.

17 Q. Set forth copy of certificate referred to in Interrogatory 16.

18 Q. When was the last United States Government certificate issued prior to the certificate mentioned in Interrogatory 16, specifying the carrying capacity of said steamer, and what such carrying capacity was?

19 Q. State what tests, if any, were made with reference to the carrying capacity of said steamer before the issuance of each of the certificates mentioned in Interrogatories 16 and 18, and what the results of such tests, if any, were.

20 Q. If the carrying capacity specified in Interrogatory 16 was greater than that specified in Interrogatory 18, state whether any tests of said steamer were made with reference to the carrying capacity thereof, between the times of the issuance of said certificate mentioned in Interrogatory 18 and said certificate mentioned in Interrogatory 16? If so, state what such tests were and the results thereof.

21 Q. State for what reasons and on what grounds said certificate for increased carrying capacity, if any, mentioned in Interrogatory 16, was granted and issued, who for your company obtained said certificate, from whom it was obtained, what procedure was adopted in obtaining it, and what requirements, if any, you complied with in procuring the same.

22 Q. State how long said steamer started to list before it tipped over on July 24, A. D. 1915.

23 Q. State whether any effort was made by you or members of your crew to warn passengers of danger and have them disembark from said steamer before said steamer tipped over on said 24th day of July, A. D. 1915, and if so, how long before said steamer so tipped over.

24 Q. State what amount of life-saving apparatus and equipment was on said steamer at the time it tipped over, and where the same was stationed on said steamer when passengers began to board the same on said 24th day of July, A. D. 1915.

25 Q. State whether said steamer was attached to its dock in any way at the time it tipped over. If so, in what way? If not, how long before it tipped over it was detached therefrom?

26 Q. State whether said steamer was attached to the tugboat *Kenosha* at the time it tipped over. If so, in what way?

27 Q. State whether said steamer was moved or towed from its dock just before it tipped over, or if an attempt was made so to move or tow it at said time. If so, in what way, and by whom, and what was done in that regard?

28 Q. Were any orders given by you or your crew to any members of the crew on said tugboat *Kenosha,* with reference to the moving or towing of said steamer just before it tipped over? If so, what were such orders, and what did said crew on said tugboat do, and what were the movements of said tugboat in response to such orders?

29 Q. State whether you became possessed of said steamer by purchasing it at a price greatly less than its original cost; whether it was defective at the time you so purchased it; and if so, state what such defective condition was; whether you purchased it at such reduced price because of such defective condition of it, and whether you knew what such defective condition was at the time you so purchased it, or

learned of such defective condition before it tipped over on said 24th day of July, A. D. 1915.

30 Q. Was said steamer ever condemned by any one before it tipped over on said 24th day of July, A. D. 1915? If so, by whom, and what were the reasons for such condemnation?

Interrogatories to be Propounded by the Above-named Libelant to, and to be Answered by, The Indiana Transportation Company.

1 Q. Was the steamer known as the *Eastland* chartered by you from The St. Joseph-Chicago Steamship Company to carry passengers from the dock on the west side of the Clark street bridge in Chicago, Illinois, to Michigan City, Indiana, on July 24, A. D. 1915?

2 Q. Was said steamer on said 24th day of July, A. D. 1915, delivered to said starting point of the voyage mentioned in Interrogatory 1, under your charter agreement, if any, with said St. Joseph-Chicago Steamship Company, and was said steamer at said time and place, and until after it tipped over, wholly manned by a crew of said St. Joseph-Chicago Steamship Company? If not manned by that company's crew, whose crew was it manned by?

3 Q. Answer Interrogatories 4 to 20, both inclusive, 22 to 28, both inclusive, and 30, about propounded to said St. Joseph-Chicago Steamship Company, as if said interrogatories were propounded to you instead of to that company?

4 Q. What, if any, investigation did your company or any of its officers make, and what, if any knowledge did your company or any of its officers have regarding the matters inquired about in the foregoing Interrogatory 3, and the interrogatories therein mentioned propounded to said St. Joseph-Chicago Steamship Company, prior to the time said steamer tipped over on July 24, A. D. 1915?

5 Q. Did you or any of the officers of your company, prior to the time passengers began to board said steamer on July

24, A. D. 1915, make any inquiry or investigation with reference to the carrying capacity of said steamer, including its capacity for carrying passengers and supplies and other paraphernalia thereon? If so, what such inquiries and investigations did you make and what were the results thereof?

6 Q. Did you or any officers of your company, prior to the time passengers began to board said steamer on July 24, A. D. 1915, make any inquiry or investigation as to what quantity of supplies and paraphernalia was on said steamer to be carried with such passengers who were to board the same, or to see that proper life-saving apparatus and equipment was provided in proper condition and in properly accessible places on said steamer for said passengers? If so, what inquiry and investigation did you make in that regard, what were the results thereof, and did you do anything, and if so, what, to see that such life-saving apparatus and equipment was provided?

7 Q. Prior to the time when said steamer tipped over what, if anything, did you do to prevent it from being so overloaded with either passengers or supplies and other paraphernalia thereon, that the lives of such passengers would not be endangered?

8 Q. State all that you did at any time to protect from harm and injury the passengers who were on said steamer when it tipped over.

Interrogatories to be Propounded by the Above-named Libelant to, and to be Answered by, the Dunham Towing and Wrecking Company.

1 Q. Answer Interrogatories 9 and 22 and 25 to 28, both inclusive, above propounded to said St. Joseph-Chicago Steamship Company, as if said interrogatories were propounded to you instead of to that company.

2 Q. How long, if any time, was the tugboat *Kenosha* attached to said steamer before said steamer tipped over on

said 24th day of July, A. D. 1915? Describe how said tugboat was attached to said steamer?

3 Q. While said tugboat was attached to said steamer at said time what orders, if any, were given to, or in the possession of, the crew on said tugboat, and by whom were such orders given?

4 Q. State who hired the use of said tugboat for the purpose of moving and towing said steamer, and all that said tugboat did in connection with the moving and towing of said steamer before it tipped over on said 24th day of July, A. D. 1915?

5 Q. Was said steamer grounded on the bottom of the Chicago River when or before it tipped over on said 24th day of July, A. D. 1915? If so, when, how long, and in what manner was it so grounded, and what, if anything, did such grounding have to do with said steamer tipping over?

6 Q. State the usual method of moving and towing said steamer from its dock; when and under what circumstances the dock ropes or cables are released; when and under what circumstances and to what extent the tugboat first applies power to said steamer; in what direction and in what manner does the tug first attempt to move said steamer, and who gives the orders given in so moving and towing said steamer?

7 Q. What, if any, indications did said steamer give of tipping before it tipped over on said 24th day of July, A. D. 1915? How far from its dock was it? How far had it been moved? What way was it pointed, and how was it positioned otherwise when it so tipped over?

8 Q. How long, if any time, did people jump from said steamer before it tipped over?

JAMES F. BISHOP,
As Administrator of the Estate of
Earl H. Dawson, Deceased, Libelant.

(Endorsed:) Filed Aug. 2, 1915. T. C. MacMillan, Clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to the Marshal of the Northern District of Illinois, Greeting:

Whereas a libel has been filed in the District Court of the United States in and for the Northern District of Illinois, on the 21st day of August, in the year of our Lord one thousand nine hundred and fifteen, by James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, against St. Joseph-Chicago Steamship Company, a corporation; Indiana Transportation Company, a corporation; and Dunham Towing and Wrecking Company, a corporation, for reasons and causes in said libel mentioned, and praying the usual process and citation of the said court in that behalf to be made, and that said respondents may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of —— dollars, the damages alleged in said libel, besides interest and costs of suit;

You are therefore commanded to cite the said St. Joseph-Chicago Steamship Company, a corporation; Indiana Transportation Company, a corporation; and Dunham Towing and Wrecking Company, a corporation, to be and appear before the said court, to be holden in and for the Northern District of Illinois, at the United States court-room, in the city of Chicago, in said district, on the first Monday in September next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, and then and there to appear and answer the allegations of the libel and interpose their defenses, if any there be.

And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Kenesaw M. Landis, Judge of said court, this 27th day of August, in the year of our Lord

one thousand nine hundred and fifteen and of our Independence the 140th year.

[SEAL.] T. C. MACMILLAN, *Clerk,*
By ALVA V. SHOEMAKER,
Deputy Clerk.

[Endorsed:] No. 32236. 12636. United States District Court, Northern District of Illinois, Eastern Division. In Admiralty. Jas. F. Bishop, Adm'r, etc., *vs.* St. Joseph Steamship Co. *et al.* Citation. Returnable first Monday in Sep., A. D. 1915. T. C. MacMillan, Clerk. Sue as poor person per order of court. Filed Sep. 4, 1915. Harry W. Standidge, Proctor for Libelant.

(Endorsed on the Back.)

I have served this writ within my district in the following manner, to wit:

Upon the within named, St. Joseph-Chicago Steamship Company, a corporation, by reading and by copy to W. K. Greenebaum, local manager, at Chicago, Illinois, this 30th day of August, A. D. 1915. Upon the within named, I have served this writ within my district in the following manner, to wit: Upon the within named, St. Joseph-Chicago Steamship Company, a corporation, by reading and by copy to Martin Flatow, excursion agent at Chicago, Illinois.

Upon the within named, Dunham Towing & Wrecking Company, a corporation, by reading and by copy to Capt. Robert Young, local manager, both at Chicago, Illinois, this 8th day of August, A. D. 1915.

Upon the within named, Indiana Transportation Company, a corporation, by reading and by copy to W. K. Greenebaum, manager, at Chicago, Illinois, this 30th day of August, A. D. 1915, I was unable to find the president or any other officer of the above corporation within my district.

JOHN J. BRADLEY, *U. S. Marshal,*
By THOMAS HENNEBURY, *Deputy.*

Marshal's fees: 3 services, $6.00.

Exceptions.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 32,236.

JAMES F. BISHOP, *Administrator of the Estate of Earl H. Dawson, Deceased,*

vs.

ST. JOSEPH-CHICAGO STEAMSHIP COMPANY ET AL.

And now comes the Indiana Transportation Company, one of the defendants in the above-entitled cause, and files its exceptions to the libel in said cause.

1st. That the said libel is based upon a right of action which does not exist under the maritime laws of the United States, and that therefore this court has no jurisdiction of the cause of action stated in the libel.

2d. That the said libel does not state any damages suffered by the libelant or those whom he represents.

BOYLE & MOTT AND
C. E. KREMER,
Proctors for Defendant.

(Endorsed:) Filed Oct. 2, 1915. T. C. MacMillan, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MONDAY, July 24, 1916.

Present: Hon. Kenesaw M. Landis, District Judge.

32,236.

JAMES F. BISHOP, *Administrator, etc.,*
vs.
ST. JOSEPH-CHICAGO STEAMSHIP COMPANY ET AL.

Upon motion, leave is hereby granted certain parties to intervene as libelants herein, and to all said libelants to file an amended libel instanter making the city of Chicago, Chicago Railways Company, M. H. McGovern, M. H. McGovern Co., Great Lakes Dredge and Dock Company, and Cohen Company, Fred W. Peck, Sanitary District of Chicago and Western Electric Company additional respondents.

It is further ordered that all respondents served except to or answer said amended libel on or before September 2. The clerk is hereby directed to issue citation, returnable the first Monday in September, to respondents not served.

Exceptions.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 32,236.

JAMES F. BISHOP, *Administrator of the Estate of Earl H. Dawson, Deceased, et al.*

vs.

ST. JOSEPH-CHICAGO STEAMSHIP COMPANY, *a Corporation, et al.*

And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, in the following particulars:

1st. That the said amended libel is informal, contrary to the admiralty rules and procedure, and contrary to law, because it joins with the original libelant 373 additional libelants who have a separate and distinct cause of action from that of the original libelant, and are therefore improperly joined.

2d. Because the above-named respondent cannot in law, in this case, be called upon to answer the said amended libel as to 373 additional libelants.

3d. In all of which particulars the said amended libel is imperfect and insufficient, and that the said respondent is not bound to answer the same as to the 373 additional libelants improperly joined to the original libel.

INDIANA TRANSPORTATION COMPANY,
By C. E. KREMER, *Its Proctor.*

C. E. KREMER,
Proctor for Indiana Transportation Co.

(Endorsed:) Filed Sep. 2, 1916. T. C. MacMillan, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

32,236.

MONDAY, September 18, 1916.

Present: Honorable Kenesaw M. Landis, District Judge.

JAMES F. BISHOP, *Administrator, etc.,*

vs.

ST. JOSEPH-CHICAGO STEAMSHIP COMPANY ET AL.

Upon motion of the libelant, it is ordered by the court that the exceptions of the St. Joseph-Chicago Steamship Company and Indiana Transportation Company to joinder be and the same are hereby overruled, and said respondents are ruled to answer in twenty days from this date.

Exceptions to Libel.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 32,236.

JAMES F. BISHOP, *Administrator of the Estate of Earl H. Dawson, Deceased, et al.,*

vs.

ST. JOSEPH-CHICAGO STEAMSHIP COMPANY, *a Corporation, et al.*

And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, and others as follows:

This respondent does not hereby waive its exceptions heretofore filed in relation to the misjoinder of 373 additional libels and its right, and insists that this court has not jurisdiction of the respondent of so much of the said amended libel as sets up the claims of the 373 additional libelants joined with the original libel, and it therefore insists upon its right to further object to the joining of said 373 additional libelants, and further because said amended libel does not state facts and circumstances which make out a cause of action against this respondent, in all of which particulars the said amended libel is imperfect and insufficient, and that the said respondent is not bound to answer the same.

INDIANA TRANSPORTATION COMPANY,
By C. E. KREMER, *Its Proctor.*

C. E. KREMER,
Proctor for Indiana Transportation Company.

(Endorsed:) Filed Oct. 7, 1916. T. C. MacMillan, Clerk.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the certain libel and interrogatories, filed in said court, on the second day of August, 1915, citation issued out of the clerk's office of said court, on the 27th day of August, 1915, together with the marshal's return thereon endorsed and filed on the fourth day of September, 1915, exceptions of the Indiana Transportation Company, filed October 2, 1915, order entered of record on the 24th day of July, 1916, exceptions of the Indiana Transportation Company to amended libel, filed September 2, 1916, order entered of record on the 18th day of September, 1916, and exceptions of Indiana Transportation Company, to the amended libel, filed October 7, 1916, in the cause entitled James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, *et al. vs.* St. Joseph-Chicago Steamship Company *et al.*, as the same appear from the original records and files thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this 9th day of January, 1917.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, IN ADMIRALTY.

To the Honorable Judges of the District Court of the United States in and for said District and Division:

The amended libel of—

James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, et al., against the St. Joseph-Chicago Steamship Company, a corporation; the Indiana Transportation Company, a corporation; the Dunham Towing & Wrecking Company, a corporation; the City of Chicago, a corporation; the Chicago Railways Company, a corporation; M. H. McGovern, the M. H. McGovern Company, a corporation; the Great Lakes Dredge & Dock Company, a corporation; Cohen & Co., a corporation; Ferdinand W. Peck, the Sanitary District of Chicago, a corporation; and Western Electric Company, a corporation, respondents, filed by leave of court first had and obtained herein.

James F. Bishop, administrator of the estate of Marie Adamkiewicz, deceased;
James F. Bishop, administrator of the estate of Harold E. Andren, deceased;
James F. Bishop, administrator of the estate of Frances Badalensky, deceased;
James F. Bishop, administrator of the estate of Harry Baia, deceased;
James F. Bishop, administrator of the estate of Morris W. Baldwin, deceased;
James F. Bishop, administrator of the estate of Paul Bannach, deceased;
James F. Bishop, administrator of the estate of Edward S. Bartlett, deceased;

James F. Bishop, administrator of the estate of Margaret Becker, deceased;
James F. Bishop, administrator of the estate of Agnes Behrendt, deceased;
James F. Bishop, administrator of the estate of Gertrude Behrendt, deceased;
James F. Bishop, administrator of the estate of Charles Bender, deceased;
James F. Bishop, administrator of the estate of Le Roy D. Bennett, deceased;
James F. Bishop, administrator of the estate of Myrtle J. Berglund, deceased,
James F. Bishop, administrator of the estate of David A. Bergman, deceased;
James F. Bishop, administrator of the estate of Ida May Berlin, deceased;
James F. Bishop, administrator of the estate of David G. Benson, deceased;
James F. Bishop, administrator of the estate of Joseph Bertrand, deceased;
James F. Bishop, administrator of the estate of Frederick Biehl, deceased;
James F. Bishop, administrator of the estate of Matthew J. Bonga, deceased;
James F. Bishop, administrator of the estate of Elizabeth Bosch, deceased;
James F. Bishop, administrator of the estate of Oliver J. Bouffard, deceased;
James F. Bishop, administrator of the estate of Harriet Budner, deceased;
James F. Bishop, administrator of the estate of Arthur Buege, deceased;
James F. Bishop, administrator of the estate of Annie Buth, deceased;
James F. Bishop, administrator of the estate of Anna Brenner, deceased;

James F. Bishop, administrator of the estate of Thomas J. Carroll, deceased;
James F. Bishop, administrator of the estate of Nellie Casper, deceased;
James F. Bishop, administrator of the estate of Frieda Christiansen, deceased;
James F. Bishop, administrator of the estate of Rose V. Cullen, deceased;
James F. Bishop, administrator of the estate of Fred J. Dankers, deceased;
James F. Bishop, administrator of the estate of Lillian Davis, deceased;
James F. Bishop, administrator of the estate of Martha A. Darkar, deceased;
James F. Bishop, administrator of the estate of Earl H. Dawson, deceased;
James F. Bishop, administrator of the estate of Charles Doll, deceased;
James F. Bishop, administrator of the estate of Robert Doll, deceased;
James F. Bishop, administrator of the estate of Eleanora Doneske, deceased;
James F. Bishop, administrator of the estate of Florence T. Drury, deceased;
James F. Bishop, administrator of the estate of John Dudek, deceased;
James F. Bishop, administrator of the estate of Mary Dudek, deceased;
James F. Bishop, administrator of the estate of Minnie Dziondziak, deceased;
James F. Bishop, administrator of the estate of Bessie Dvorak, deceased, and all other intervening libelants,

against the St. Joseph-Chicago Steamship Company, a corporation organized and existing under the laws of the State of Michigan; the Indiana

Transportation Company, a corporation organized and existing under the laws of the State of Indiana; the Dunham Towing & Wrecking Company, a corporation organized and existing under the laws of the State of Illinois; the City of Chicago, a municipal corporation organized and existing under the laws of the State of Illinois; the Chicago Railways Company, a corporation organized and existing under the laws of the State of Illinois; M. H. McGovern, the M. H. McGovern Company, a corporation organized and existing under the laws of the State of Illinois; the Great Lakes Dredge & Dock Company, a corporation organized and existing under the laws of the State of Illinois; Cohen & Co., a corporation organized and existing under the laws of the State of Illinois; Ferdinand W. Peck, the Sanitary District of Chicago, a corporation organized and existing under the laws of the State of Illinois; and the Western Electric Company, a corporation organized and existing under the laws of the State of Illinois; and each and all of said corporations at the times hereinafter mentioned, exercising its and their corporate powers and authority, and acting and carrying on its and their business, as such corporation and corporations, in said State of Illinois, under the laws of the State of Illinois and of the United States of America, in a cause of damage, civil and maritime, allege as follows:

First. Said James F. Bishop alleges that he is administrator of the estates of deceased persons, and each thereof, as above set forth, duly appointed and qualified to act as such.

Said Anton Schultz alleges that he is administrator of the estate of John Schultz, deceased, as above set forth, duly appointed and qualified to act as such.

Said Samuel Ginsberg alleges that he is administrator of the estate of Philip L. Ginsberg, deceased, as above set forth, duly appointed and qualified to act as such.

Said Raymond Appelt alleges that he is administrator of the estate of Leo Lewicki, deceased, as above set forth, duly appointed and qualified to act as such.

Said Mary Murphy alleges that she is administratrix of the estate of David M. Murphy, deceased, as above set forth, duly appointed and qualified to act as such.

John A. Fitzgerald alleges that he is administrator of the estate of Mary Murphy, deceased, as above set forth, duly appointed and qualified to act as such.

Rosie Albertz alleges that she is administratrix of the estate of Mary Albertz, deceased, as above set forth, duly appointed and qualified to act as such.

Richard Clarke alleges that he is administrator of the estate of Robert L. Clarke, deceased, as above set forth, duly appointed and qualified to act as such.

Harry Evenhouse alleges that he is administrator of the estates of Annie Evenhouse, deceased, and Jennie Evenhouse, deceased, and each thereof, as above set forth, duly appointed and qualified to act as such.

Anton Forst alleges that he is administrator of the estate of Emma Marie Forst, as above set forth, duly appointed and qualified to act as such.

Lillian S. Schmalz alleges that she is administratrix *de bonis non* of the estate of Nels Peter Johnson, deceased, as above set forth, duly appointed and qualified to act as such.

Martha Mundt alleges that she is administratrix of the estates of Catherine Trogg, deceased, and Charles Trogg, deceased, and each thereof, as above set forth, duly appointed and qualified to act as such.

And each of said above-named parties who is administrator or administratrix, as aforesaid, alleges that he or she was duly appointed as such by the Probate Court of Cook County, Illinois, and each of said parties brings into court his or her

letters of administration, to him or her granted by the honorable Probate Court of Cook County, Illinois, and makes proffer of same to the court.

Second. And said libelants, on information and belief, allege that on July 24, A. D. 1915, said St. Joseph-Chicago Steamship Company was the owner of a steamer known as the *Eastland*, and had chartered said steamer to said Indiana Transportation Company, for the purpose of carrying passengers thereon to Michigan City, Indiana, from a point on the Chicago River, which said river then and there was connected with Lake Michigan and the Great Lakes and was a navigable river of the navigable waters of the United States, under, and just west of, the Clark street bridge which crosses said river, in the city of Chicago, county of Cook and State of Illinois, in the district and division aforesaid, and said Dunham Towing & Wrecking Company was operating and in charge and control of a tugboat known as the *Kenosha*, which was attached to said steamer *Eastland* by a tow line or otherwise, at the point aforesaid on said Chicago River, and said steamer and tugboat were then and there being used by said St. Joseph-Chicago Steamship Company, said Indiana Transportation Company, and said Dunham Towing & Wrecking Company, in the business of commerce and navigation upon Lake Michigan and its tributary waters, including said Chicago River.

Third. That on said 24th day of July, A. D. 1915, said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company, during the lifetime of each of said above-named deceased persons, accepted as a passenger on said steamer each of said persons, and also accepted as a passenger on said steamer each of said other above-named libelants, at the point above described on said Chicago River, in the city of Chicago, county of Cook and State of Illinois, in the District and Division aforesaid, for the purpose of conveying them, and each of them, as such passengers, to Michigan City, Indiana, on said steamer, from said point

of their acceptance as passengers as aforesaid, and while attempting so to do then and there carelessly, negligently, wilfully, wantonly, wrongfully and improperly so managed, operated and controlled said steamer that by reason of such wrongful and negligent conduct on their part, and also the wrongful and negligent conduct on the part of said other above-named defendants herein, as hereinafter set forth, said steamer then and there tipped over on its side in said Chicago River, at the point in and on said river above described, and by reason thereof each and all of said above-named deceased persons was and were then and there killed, and each and all of said other above-named libelants was and were then and there greatly, severely, violently and permanently injured, both internally and externally, and by reason of such injuries have suffered, are suffering and will permanently continue to suffer great bodily pain and mental anguish, and have been hindered and prevented from attending to their usual occupations and from earning, saving and accumulating divers great gains and profits which otherwise they would have earned, saved and accumulated, and have paid and become liable to pay large sums of money in endeavoring to be cured of their said injuries so sustained by them as aforesaid, and each and all of said passengers so lost their lives and sustained such injuries while in the exercise of due care without fault or negligence on his, her or their part.

Fourth. That at the time and place of the tipping over of said steamer as aforesaid, said Dunham Towing & Wrecking Company so carelessly, negligently, wilfully, wantonly, wrongfully and improperly manned, operated and controlled its said tugboat while so attached to said steamer as aforesaid, that thereby, in connection with said wrongful, negligent and improper conduct of said other respondents, said steamer then and there was caused to and did tip over as aforesaid.

Fifth. That on said 24th day of July, A. D. 1915, and

for many years prior to said time, said city of Chicago owned, and was in the possession of, and had and exercised charge, control, management and supervision, of and over, and throughout all parts of, the harbor of said city of Chicago, including said Chicago River and also the docks along said river and particularly that part of said river at and in the vicinity of the point in and on said river above described where said steamer tipped over as aforesaid, and also all other points in, and parts of, said river and harbor, said harbor being more particularly described in and by an ordinance of said city of Chicago, as hereinafter set forth; and it was then and there the duty of said city of Chicago to have and keep said river, particularly at and in the vicinity of the point in said river where said steamer tipped over as aforesaid, and also all other points in, and parts of, said river and harbor, free and clear of and from any and all obstructions of any and every kind and nature whatsoever, which might, could or would interfere with the navigation of any and all sailing and steam vessels, including said steamer *Eastland,* in said Chicago River; and said city of Chicago also then and there had and exercised charge, control, management and supervision, of and over all sailing and steam vessels, including said steamer *Eastland,* and the anchoring, docking, loading, moving and navigation thereof, in said Chicago River, and particularly at the point in said river where said steamer tipped over as aforesaid, and also at any and all other points in, and parts of, said river and harbor, and charged and collected from the owners and those in possession and control of said steamers, including said steamer *Eastland,* rental license and other moneys, for the permission and privileges of anchoring, docking, loading, moving, and navigating of said vessels in said river and harbor; and it then and there became and was the duty of said city of Chicago to have and keep the water in said river of a proper depth, and to have and keep said river and its bed and all parts of said river, and the docks along the same, particularly at the point in said river where said steamer

tipped over as aforesaid, and also at any and all other points in, and parts of, said river and said harbor, in a proper condition for the safety of each and all of said steamers, including said steamer *Eastland,* and all persons thereon, including said above-named deceased persons and said other above-named libelants, and to prevent the improper and unsafe anchoring, docking, loading, moving, and navigating of each and all of said vessels, including said steamer *Eastland,* particularly at said point in said river where said steamer tipped over as aforesaid, and also at all other points in, and parts of, said river and said harbor; yet said city of Chicago, in violation and disregard of each and all of its said duties, and of all duties imposed upon it by reason of the premises, then and there carelessly, negligently, wrongfully, and improperly, failed and refused to have and keep said river, particularly at and in the vicinity of the point in said river where said steamer tipped over as aforesaid, and also at all other points in, and parts of, said river and said harbor, free and clear of and from any and all obstructions which might, could or would, and which did, dangerously obstruct and otherwise interfere with the anchoring, docking, loading, moving, and navigating of said steamer *Eastland* in said Chicago River, and particularly at and in the vicinity of the point in said river where said steamer tipped over as aforesaid, and by reason thereof such obstructions assisted in causing and caused, then and there, said steamer to tip over as aforesaid; and said obstructions existed and were in said river for a sufficient length of time before the tipping over of said steamer; that said city of Chicago, by the exercise of reasonable care, would have discovered such obstructions in time to have removed the same, by the exercise of reasonable care, before they assisted in causing or caused said steamer to tip over as aforesaid; and said city of Chicago also then and there carelessly, negligently, wrongfully, and improperly, failed and refused to have and keep the water in said river of a proper depth,

and to have and keep said river and its bed and all parts of said river, and the docks along the same, particularly at the point in said river where said steamer tipped over as aforesaid, and also at any and all other points in, and parts of, said river and said harbor, in a proper condition for the safety of the steamer *Eastland,* and of each and all of the persons thereon, including each and all of said above-named deceased persons and said other above-named libelants, and to prevent the improper and unsafe anchoring, docking, loading, moving, and navigating of said steamer, particularly at said point in said river where said steamer tipped over as aforesaid, and also at any and all other points in, and parts of, said river and said harbor, and by reason thereof, such improper depth of said water in said river, and said improper and unsafe condition of said river and its bed and all parts of said river, and the docks along the same, then and there assisted in causing and caused said steamer to tip over as aforesaid; and said improper depth of water in said river, and said improper and unsafe condition of said river and its bed and all parts of said river and said docks along the same, and said obstructions which were dangerous to anchoring, docking, loading, moving, and navigating of said steamer, at and in the vicinity of the point in said river where said steamer tipped over as aforesaid, and which assisted in causing and caused said steamer to tip over as aforesaid, existed for a sufficient length of time before said steamer tipped over; that said city of Chicago, by the exercise of reasonable care would have discovered same in time to have prevented them, by the exercise of reasonable care, from assisting to cause, or causing, as they did, said steamer to tip over as aforesaid.

Sixth. That several years prior to said 24th day of July, A. D. 1915, said Chicago Railways Company undertook to, and did, construct a tunnel in said Chicago River, at La Salle Street, in said city of Chicago, and through its agents, said M. H. McGovern, M. H. McGovern Company and said Great Lakes Dredge & Dock Company, and others, and said M.

H. McGovern, M. H. McGovern Company and said Great Lakes Dredge and Dock Company, each for himself and itself and each as the agent of the other and also as the agent of said Chicago Railways Company, in connection with, and incidental to, the construction of said tunnel, and otherwise, carelessly, negligently, wrongfully and improperly, placed and allowed to accumulate and exist, and permitted to be and remain, in said Chicago River, at and in the vicinity of said tunnel and of the place where said steamer tipped over in said river as aforesaid, and carelessly, negligently, wrongfully and improperly, failed and refused to remove therefrom, piling, debris and other material, substance and obstructions, which might, could or would, and which on said 24th day of July, A D. 1915, did, dangerously obstruct and otherwise interfere with the anchoring, docking, loading, moving and navigating of said steamer, and which, on said 24th day of July, A. D. 1915, assisted in causing and caused said steamer, while the stern of said steamer was over said tunnel, to tip over on its side with its stern upon the top of said tunnel, in said river, as and at the place aforesaid.

Seventh. That on the 24th day of July, A. D. 1915, and for several months and years prior to that time, said Cohen & Company and said Ferdinand W. Peck were the owners and were in possession and control, of certain premises, including the buildings thereon, abutting on said Chicago River at the place where said steamer tipped over as aforesaid, and then and there themselves and through their agents carelessly, negligently, wrongfully and improperly, threw, dumped, or otherwise placed, and permitted to be thrown, dumped or otherwise placed, and allowed to be and remain, stone, brick, earth, cement, garbage, debris, and other substance and material, in said river, at and in the vicinity of the place in said river where said steamer tipped over as aforesaid, and carelessly, negligently, wrongfully and improperly, failed and refused to remove such stone, cement,

wood, garbage, debris, material and other substance from said river, which said stone, cement, wood, garbage, debris, material and other substance dangerously obstructed and otherwise interfered with the anchoring, docking, loading, moving and navigating of said steamer, and assisted in causing and caused said steamer to tip over on and at the time and place aforesaid.

Eighth. That on said 24th day of July, A. D. 1915, and for several years prior to that time, said Sanitary District of Chicago was in possession of, and had and exercised charge, control and management and supervision over, said Chicago River from the place of its junction with Lake Michigan to Lockport, Illinois, including the part of said river at and in the vicinity of the place where said steamer tipped over in said river as aforesaid, and it then and there carelessly, negligently, wrongfully and improperly, failed and refused to have and keep the water in said river of a proper depth for the safety of the steamer *Eastland,* and all persons thereon, including each and all of said above-named deceased persons and said other above-named libelants, and carelessly, negligently, wrongfully and improperly failed and refused to have and keep said river and its bed and all parts of said river free and clear of and from any and all obstructions which might, could or would, and which on said 24th day of July, A. D. 1915, did dangerously obstruct and otherwise interfere with the anchoring, docking, loading, moving and navigating of said steamer *Eastland,* and which assisted in causing and caused said steamer to tip over, in said Chicago River, as and at the time and place aforesaid.

Ninth. That on said 24th day of July, A. D. 1915, said Western Electric Company carelessly, negligently, wrongfully and improperly provided said steamer for the carriage of said above-named deceased persons and said other above-named persons who are libelants herein, and each of said persons, as passengers on said steamer, from said point in said river where said steamer tipped over as aforesaid, to

Michigan City, Indiana, and then and there invited and permitted said persons, and each of them, to board and be and remain on said steamer at said point in said river when the conditions of and surrounding said steamer and said river at said point were such that it was dangerous and unsafe for said persons then and there to board and be and remain on said steamer, on account of the overloading of said steamer and of insufficient water in, and improper and negligent operation by the crew of said steamer of, the ballast tanks in said steamer, and encroachments upon, and obstructions and lack of proper depth of water in, said river at said point, and without a proper license or permit having been granted by the city of Chicago for said persons to board said steamer, at said time and place, in violation of Chap. XIII of the ordinances of said city of Chicago, contained in the Chicago Code of 1911, as hereinafter set forth, and then and there carelessly, negligently, wrongfully and improperly controlled, managed and operated, and permitted to be controlled, managed and operated, said steamer, at the time and place aforesaid, and by reason of such wrongful, negligent, and improper conduct on its part, in connection with said wrongful, negligent and improper conduct on the part of said other respondents, said steamer then and there was caused to and did tip over as and at said time and place.

Tenth. Said libelants, not being advised of all that took place and of all conditions existing on and in connection with said steamer and tugboat, and of the condition of said Chicago River and its docks, at and before the time of the tipping over of the said steamer as aforesaid, and therefore reserving the right to claim the benefit of any and all faults causing such tipping over of said steamer which may appear upon a full hearing herein, on information and belief allege that said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company, in addition to their negligent and wrongful conduct above set forth, were guilty

of the following specific faults which caused said steamer so to tip over.

Eleventh. And under an act to provide for incorporation of cities and villages, passed by the General Assembly of the State of Illinois, approved April 10, 1872, and in force July 1, 1872, and adopted by said city of Chicago on, to wit, April 23, A. D. 1875, and which is set forth in Hurd's Revised Statutes of Illinois (1912 Edition), in chapter 24 thereof, it is provided in paragraphs twenty-eighth to fortieth of Article V of said act, that city councils in cities adopting said act should have the following powers:

"Twenty-eighth. To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof.

"Twenty-ninth. To construct and keep in repair culverts, drains, sewers and cesspools and to regulate the use thereof.

"Thirtieth. To deepen, widen, dock, cover, wall, alter or change channel of water courses.

"Thirty-first. To construct and keep in repair canals and slips for the accommodation of commerce.

"Thirty-second. To erect and keep in repair public landing places, wharves, docks and levees.

"Thirty-third. To regulate and control the use of public and private landing places, wharves, docks and levees.

"Thirty-fourth. To control and regulate the anchorage, moorage and landing of all water craft and their cargoes within the jurisdiction of the corporation.

"Thirty-fifth. To license, regulate and prohibit wharf-boats, tugs and other boats used about the harbor, or within such jurisdiction.

"Thirty-sixth. To fix the rate of wharfage and dockage.

"Thirty-seventh. To collect wharfage and dockage from all boats, rafts or other craft landing at or using any public landing place, wharf, dock or levee within the limits of the corporation.

"Thirty-eighth. To make regulations in regard to

use of harbors, towing of vessels, opening and passing of bridges.

"Thirty-ninth. To appoint harbor masters and define their duties.

"Fortieth. To provide for the cleansing and purification of waters, water courses and canals, and the draining or filling of ponds on private property, whenever necessary to abate or prevent nuisances."

And said city of Chicago, in addition to its negligent and wrongful conduct above set forth, was guilty of the following faults which caused, and concurred with the negligence of said other respondents in causing, said steamer to tip over as aforesaid:

1. Said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company, were negligent in using a steamer which was, and which they knew, or by the exercise of proper care would have known, to be, unsafe and unseaworthy.

2. That they were negligent in permitting a large number of passengers to board said steamer without attending to their duty to see that proper precautions were taken, and without taking proper precautions, to protect said passengers from harm and injury.

3. That they were negligent in allowing a larger number of passengers to board said steamer than safely and properly could be carried thereon.

4. That they were negligent in not providing proper and competent servants, and a sufficient number of such servants, to manage, control and operate said steamer.

5. That they were negligent in not providing sufficient competent employees to properly manage, control and operate said steamer, and in providing employees who negligently and improperly managed, controlled and operated said steamer.

6. That they were negligent in not providing proper ballast tanks and other apparatus and appliances to prevent said steamer tipping over.

7. That they were negligent in improperly operating, controlling and managing the ballast tanks, apparatus and appliances which were provided on said steamer.

8. That they were negligent in allowing a large number of passengers to board said steamer, and in moving and attempting to move said steamer with its ballast tanks partially or wholly unfilled with water.

9. That they were negligent in disconnecting the ropes and cables by which said steamer was attached to its dock.

10. That they were negligent in moving and in attempting to move or have moved said steamer when it was, and when they knew, or by the exercise of proper care would have known, that it was, in an improper and unsafe condition to be moved.

11. That they were negligent in moving and in attempting to move or have moved said steamer when it was, and when they knew, or by the exercise of proper care would have known, that it was, in an improper and unsafe condition to be moved.

11. That they were negligent in moving and in attempting to move or have moved said steamer in an improper and unsafe manner and under conditions rendering it improper and unsafe for said steamer so to be moved.

12. That they were negligent in allowing and in ordering the tug working with said steamer to move and tow and to attempt to move and tow said steamer under improper and unsafe conditions and in an improper and unsafe manner.

13. That they were negligent in allowing and in ordering said tug to move and tow and to attempt to move and tow said steamer when said steamer was, and when they knew, or by the exercise of proper care would have known, that said steamer was, in an improper and unsafe condition to be moved and towed.

14. That they were negligent in not warning and ordering the passengers on said steamer to leave and disembark therefrom, when it was, and when they, said companies, knew, or

by the exercise of proper care would have known, that it was, dangerous and unsafe for such passengers to remain thereon.

15. That they were negligent in allowing passengers to board said steamer when it was, and when they, said companies, knew, or by the exercise of proper care would have known, that it was, dangerous and unsafe for such passengers to board same.

16. That they were negligent in permitting a large number of passengers to board said steamer without previously having had said steamer properly inspected and tested to determine whether such steamer was properly constructed and equipped and in proper condition, and without having previously made sufficient investigation to determine whether the conditions surrounding said steamer at the time and place in question were proper, to safely allow such large number of passengers to be on said steamer at said time and place.

17. That they were negligent in permitting a large number of passengers to board said steamer when said steamer was not, and when they, said companies, knew, or by the exercise of proper care would have known, that said steamer was not, properly constructed and equipped and in proper condition, and when they, said companies, knew, or by the exercise of proper care would have known, that the conditions surrounding said steamer at the time and place in question were not proper, to safely allow such large number of passengers to be on said steamer at said time and place.

18. That they negligently permitted a large number of passengers to board said steamer without having had proper inspections and tests made to determine whether said steamer was sufficiently stable and in proper condition, and whether the conditions surrounding said steamer at the time and place in question were proper, to safely allow such number of passengers to be on said steamer at said time and place, and negligently permitted such large number of passengers

to board same when it was not, and when they, said companies, knew, or by the exercise of proper care would have known, that it was not, sufficiently stable and in proper condition for such purpose, and when they, said companies, knew, or by the exercise of reasonable care would have known, that the conditions surrounding said steamer at the time and place in question were not proper for said purpose at said time and place.

19. They negligently failed to provide sufficient and proper life-saving apparatus and equipment on board said steamer for the number of passengers permitted by them to board, and who did board, said steamer, and negligently failed to have properly accessible for such passengers such life-saving apparatus and equipment as was provided thereon.

20. They negligently failed to use proper care to protect from harm and injury the passengers permitted by them to board said steamer, when said steamer was, and when they, said companies, knew, or by the exercise of proper care would have known, that it was, in danger of tipping over.

21. They negligently and wantonly permitted said steamer to be overloaded with a great amount of freight and supplies and other paraphernalia in addition to the large number of passengers permitted by them to be thereon, without taking proper precautions and exercising proper care to make said steamer stable and safe for said passengers at the time and place it tipped over.

22. They were warned of the danger of said steamer tipping over a sufficient length of time before it did tip over, to have enabled them by the exercise of proper care to cause all or a portion of said passengers to safely disembark from said steamer before it tipped over and prevent it from tipping over, yet they carelessly, negligently, wilfully, and wantonly failed and refused to heed such warnings and exercise such care.

23. They carelessly, negligently, wilfully, and wantonly failed to use proper care to protect from harm and injury

said passengers by making proper inspection and investigation of the river, river bed, and dock at and surrounding the place aforesaid where said passengers boarded said steamer, before said steamer tipped over.

24. They carelessly, negligently, wilfully, and wantonly permitted a large number of passengers to board said steamer at the place aforesaid where said passengers did board said steamer, when the condition of said steamer and of the river, river bed, and dock at and surrounding said place was such that it was dangerous and unsafe for such large number of passengers then and there to board said steamer.

25. In the loading and operating of said steamer they knowingly, negligently, and wantonly experimented with the safety of the passengers on said steamer when said passengers were, and when they, said companies, knew, or by the exercise of proper care would have known, that said passengers were, in danger of harm and injury.

26. They negligently and wantonly permitted a large number of passengers to board said steamer at a time and place when and where it was dangerous and unsafe for such large number of passengers to board said steamer, when they, said companies, knew, or by the exercise of proper care would have known, of such danger.

27. They negligently, and wilfully and wantonly, permitted passengers to continue to board said steamer when it was, and when they, said companies, knew, or by the exercise of proper care would have known, that it was, dangerous and unsafe for passengers to continue to board said steamer.

28. They negligently and wantonly permitted a large number of passengers to board said steamer at a dock where it was not customary for passengers to board said steamer, without making proper investigation to determine whether it was safe, and when it was unsafe, for such large number of passengers to board said steamer at said dock.

29. They negligently permitted said steamer to list and

continue to list until it tipped over, without taking proper precautions to prevent it from tipping over.

30. They negligently and knowingly operated said steamer while it was listing in a dangerous manner before it tipped over.

31. They negligently failed to exercise proper care to prevent said steamer from tipping over.

32. They negligently loaded, managed, controlled, and operated said steamer, so that it did tip over.

33. They negligently and knowingly and wilfully and wantonly failed to obtain a proper permit from the city of Chicago, or any other proper party, to dock and load with passengers said steamer at the time and place where it tipped over, and negligently, knowingly, wilfully, and wantonly docked and loaded with passengers said steamer at said time and place without such a permit, and without making proper investigation and using proper care to protect from harm and injury such passengers at said time and place.

34. They negligently, knowingly, wilfully, and wantonly obtained from the Government of the United States, and made use of, a certificate providing for the carriage of twenty-five hundred passengers, in addition to a crew, on said steamer, without having had any proper investigation made to determine how many passengers it was safe to carry on said steamer, and negligently permitted a larger load to be upon said steamer at the time and place it tipped over than properly and safely could be thereon at said time and place.

35. They negligently failed to provide proper exits for passengers from said steamer, so as to properly protect from harm and injury the passengers whom they had permitted to board, and who were on, said steamer at the time and place when and where it tipped over.

36. They negligently, wrongfully, knowingly, and wilfully conducted their business of carrying passengers for hire at the place where said steamer tipped over, as aforesaid,

without having a license issued by the city of Chicago authorizing them to carry on such business at said place, and without having a license from said city of Chicago designating such place as a place where they could carry on such business, contrary to and in violation of the provisions of Chapter XIII of the Chicago Code of 1911, of the ordinances of said city of Chicago, which is hereinafter set forth.

37. They then and there so carelessly, negligently, wrongfully, and improperly operated, controlled, and managed their said steamer that it then and there struck on obstructions underneath it in said river.

Tenth. And said Dunham Towing & Wrecking Company in addition to its negligent and wrongful conduct above set forth, was guilty of the following faults which caused said steamer to tip over as aforesaid.

1. It negligently attempted to move and tow, and did move and tow, said steamer when it was not, and when it, said company, knew, or by the exercise of proper care would have known, that said steamer was not, in a safe and proper condition to be moved and towed.

2. It negligently attempted to move and tow, and did move and tow, said steamer in an improper and unsafe manner.

3. It negligently managed, operated, and controlled its said tugboat while same was attached to said steamer.

4. It negligently failed to give proper warning and to exercise proper care to prevent said steamer tipping over.

(Here follow many pages of averments purporting to charge defendants other than the St. Joseph-Chicago Steamship Company and the Indiana Transportation Company.

Said amended libel therein charges that "each and all of said respondents combined and concurred in causing the steamer to tip" and this averment is followed by allegations of injury and damage as to each libellant.)

IN THE UNITED STATES DISTRICT COURT,
For Northern District of Illinois, Eastern Division:

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of excerpts from amended libel in case number 32,236, wherein James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, *et al.*, are libelants, and St. Joseph-Chicago Steamship Company *et al.*, are respondents, as same appears from the original—filed in said court on the twenty-fourth day of July, A. D. 1916, and now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district this twelfth day of January, A. D. 1917.

[SEAL.] T. C. MACMILLAN. *Clerk.*

[Endorsed:] Supreme Court U. S., October Term, 1916. Term No. 25, Original. *Ex parte;* In the Matter of the Indiana Transportation Company, petitioner. Return of respondent to rule to show cause. Filed January 15, 1917.